IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1989 of 2002

with

Civil Application No.6850 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYANTILAL DWARKADAS SAMPAT

Versus

GUJARAT INDUSTRIAL CORPORATIONBHVANAGAR

Appearance:

1. First Appeal No. 1989 of 2002

MR MB PARIKH for the appellant

MR MAULIN R RAVAL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.H.KADRI

Date of decision: 15/09/2003

ORAL JUDGEMENT

1. The appellant, original plaintiff, by filing this appeal under Section 96 of the Code of Civil Procedure, has challenged the judgment and decree dated June 29, 2002, passed by the learned 2nd Joint Civil Judge (S.D.) Amreli, in Special Civil Suit No.64 of 1997.

2. The appellant-plaintiff had been allotted a shed in the Industrial Estate of Amreli Town, bearing Shed No.K-1-87/2 for a consideration of Rs.1,10,893/-. Pursuant to the agreement, the plaintiff was handed over the possession of the suit shed and an undertaking was filed by the plaintiff. As per the terms of the agreement, the plaintiff had paid an amount of Rs.1,01,000/- towards instalments. As the plaintiff did not make the payment of instalments regularly, the defendant-Corporation had demanded the amount of penal interest of Rs.1,04,842/-. The plaintiff did not pay the amount of instalment and interest demanded, and there were dues of the amount of Rs.1,57,000/-.

3. The plaintiff had challenged the demand of Rs.1,57,000/- made by the defendant-Corporation by filing Special Civil Suit No.64 of 1997 in the Court of the learned 2nd Joint Civil Judge (S.D.) Amreli. The suit was resisted by the defendant-Corporation by filing its written statement at Exh.38, inter-alia, contending that the plaintiff had not served the statutory notice under the GIDC Act and, hence, the suit was liable to be dismissed. It was contended that the suit shed was not sold to the plaintiff, but only an agreement to sell was executed, and the plaintiff was to act and pay the amount of instalments as agreed in the said agreement. It was contended by the defendant-Corporation that, as the plaintiff had not paid the instalments, penal interest was charged and levied as per the terms and conditions of the agreement. Lastly, it was contended that, as the plaintiff had not paid the amount of instalments and had also not paid the amount of interest regularly, he has no authority or right to remain in possession of the suit shed and, therefore, the suit be dismissed with costs.

4. On the basis of the rival pleadings of the parties, the learned Judge had framed issues at Exh.5. The parties had led oral evidence and produced documentary evidence. The learned Judge, after hearing the parties and after appreciating the oral as well as documentary evidence, had come to the conclusion that, as the plaintiff had not paid the amount of installments and the interest agreed in the agreement to sell, he was not entitled to retain possession of the suit shed. The learned Judge further held that the plaintiff had not

paid the disputed amount of interest, which was levied as per the Rules and Regulations framed by the defendant-Corporation. On the basis of the aforesaid findings, the learned Judge has dismissed the suit filed by the appellant-plaintiff, which has given rise to filing of this First Appeal.

5. At the time of admission/hearing of the appeal, the record and proceedings of Special Civil Suit No.64 of 1997 were called for. I have perused the record and proceedings of the trial court and have also heard the submissions made by the learned advocates appearing for both the parties. The learned advocate for the appellant has tendered an affidavit, which is ordered to be taken on record.

6. It is not disputed that the plaintiff was allotted Shed No.K-1-87/2 in the Industrial Estate of Amreli Town, and, pursuant to the agreement to sell, the plaintiff had not paid the amount of instalment and interest as agreed upon. On July 29, 1995, the defendant-Corporation had passed an order for recovery of possession of the suit shed from the plaintiff because he was in arrears of Rs.1,22,022/- plus penal interest and IDP. The plaintiff himself had produced a letter at Exh.85 which had indicated that he was in arrears of the aforesaid amount and, therefore, it is an admitted fact that the plaintiff has not acted as per the agreement to sell Exh.100. In view of the terms and conditions of the agreement and as per the Rules and Regulations framed by the defendant-Corporation, the penal interest was levied which was also not paid by the plaintiff towards the outstanding amount. The record further indicates that the defendant-Corporation had shown leniency to the plaintiff by not taking back possession of the suit shed because of non-payment of amount of instalments and penal interest, though the statements of the outstanding amounts were periodically forwarded to the plaintiff. Finally, the defendant-Corporation by letter dated September 20, 1996 at Exh.97 had also given an option that the plaintiff could retain the possession of the suit shed on the condition that the plaintiff should pay 50% of the outstanding amount of Rs.1,57,962/-. The plaintiff had not acted upon, nor offered 50% of the amount as per the letter at Exh.96. Sufficient opportunity was offered by the defendant-Corporation to the plaintiff to pay up the amount due along with penal interest. The statements of outstanding amounts were also furnished to the plaintiff from time to time and, therefore, he had no ground to make a grievance about the

amounts due to the defendant-Corporation.

7. In view of the admitted facts of the case and voluminous documentary evidence on record, I do not find any infirmity in the impugned judgment. Therefore, the present appeal is required to be dismissed at the admission stage itself.

8. As a result of foregoing discussion, this appeal fails and is dismissed. Notice is discharged with no order as to costs.

9. As the appeal is dismissed, the Civil Application for stay does not survive and is disposed of. Notice is discharged with no order as to costs.

(M.H. Kadri, J.)

(swamy)